

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

DAVID WAYNE GNAU,

Petitioner,

v.

CV12-1206 MCA/CG

JAMES JANECKA, et al.,

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S  
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

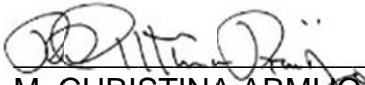
**THIS MATTER** comes before the Court on the Magistrate Judge's *Proposed Findings and Recommended Disposition* ("PFRD"), filed on March 29, 2013, (Doc. 13), and Petitioner's *Motion to Reconsider Habeas Dismissal on These Grounds*, filed on April 5, 2013, (Doc. 14), and *Attachment to Reconsider Motion*, filed on April 8, 2013, (Doc. 15) (collectively, "Objections"). The Magistrate Judge found that some of Petitioner's grounds for relief were non-cognizable habeas claims and that Petitioner had failed to exhaust his remedies because none of his claims had been properly presented to the New Mexico Supreme Court. (Doc. 13 at 5-7). Analyzing the rest of Petitioner's claims, the Magistrate Judge found that several claims had been procedurally defaulted and recommended that these be dismissed with prejudice. (Doc. 13 at 8-9). The Magistrate Judge also recommended that portions of Petitioner's ineffective assistance of counsel and prosecutorial misconduct claims be dismissed without prejudice to allow Petitioner to raise these claims in state court. (Doc. 13 at 9-11).

Petitioner's Objections fail to address any of the Magistrate Judge's findings. In

his Objections, Petitioner elaborates on the factual bases of his claims, but does not object to the Magistrate Judge's analysis of his failure to exhaust his state court remedies. (Doc. 14 at 1-3). Because Petitioner's Objections do not address the Magistrate Judge's application of the law to his claims, his Objections are overruled.

**IT IS SO ORDERED** that:

- a. The Proposed Findings and Recommended Disposition is **ADOPTED**;
- b. Petitioner's illegal search and seizure and denial of legal access claims are **DISMISSED WITH PREJUDICE**;
- c. The portions of Petitioner's ineffective assistance of counsel and prosecutorial claims that are procedurally barred are **DISMISSED WITH PREJUDICE**;
- d. The portions of Petitioner's ineffective assistance of counsel and prosecutorial misconduct claims that have not been exhausted be **DISMISSED WITHOUT PREJUDICE**;
- e. A certificate of appealability is **DENIED**.

  
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M. CHRISTINA ARMIJO  
Chief United States District Judge